



**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
SPEEDWAY HIGH SCHOOL**

Justin James v. State of Indiana

Appeal from:

Bartholomew Superior Court

The Honorable Chris D. Monroe,
Judge

Oral Argument:

Friday, April 13, 2007

1:00—1:40 p.m.

20 minutes each side

CRIMINAL LAW

Is Mr. James's sentence appropriate in light of the nature of the offense and his character?

Did the trial court properly use aggravators and mitigators in imposing the maximum sentence?

Did Mr. James's convictions constitute an episode of criminal conduct, such that the trial court erred in imposing consecutive sentences?

CASE SYNOPSIS

Facts and Procedural History

Between December 15, 1998 and May 16, 1999, James was involved in various criminal acts. First, James, along with other teenagers, broke into a doctor's office. They stole cash, checks, and equipment, while causing significant damage to the office. Then, on February 18, 1999, James stole a purse from a car. He gave his sister the stolen credit cards in the purse to purchase merchandise, and he used the money to purchase marijuana. Three months later, James, again with other teenagers, broke

into Machinery Moving's place of business. They stole approximately \$515.00 in cash and caused extensive damage to the business.

James was placed on house arrest while he awaited trial. On one occasion, while James was drinking with others at his house, community corrections arrived. To avoid being caught, James cut off his ankle bracelet and fled. James spent the next two weeks hiding from authorities, but he eventually was caught and placed in the Department of Correction.

*Justin James v. State of Indiana***CASE SYNOPSIS**

The State charged James in four separate causes, specifically: 1) under CF-404, he was charged with theft as a Class D felony, criminal mischief as a Class A misdemeanor, receiving stolen property as a Class D felony, forgery as a Class C felony, two counts of fraud each as a Class D felony, and auto theft as a Class D felony; 2) under DF-613, he was charged with escape as a Class D felony; 3) under CF-661, he was charged with burglary as a Class C felony; and 4) under CF-477, he was charged with two counts of burglary each as a Class C felony.

In total, James pled guilty to two Class C felonies and four Class D felonies -- two counts of burglary, one count of escape, one count of theft, and two counts of fraud. The trial court accepted the plea. During the sentencing hearing, the trial court listed several aggravating factors, including: 1) violation of probation and parole; 2) an extensive criminal and delinquent history; 3) the need for correctional and rehabilitative treatment best provided by commitment to a penal facility; 4) and the imposition of a reduced or suspended sentence would depreciate the seriousness of the offenses. Tr. at 91-92. The trial court stated James's age was a mitigating circumstance. Id. at 92.

The trial court sentenced James to the maximum sentence available on all counts with fourteen years suspended to probation, and the remaining fourteen years executed in the Department of Correction. James moved to modify his sentence in 2000. The trial court granted a part of James's motion by reducing the executed portion of his sentence under

CF-477 from eight years to six years with a total of four years suspended, and under CF-661 from six years executed to four years with four years suspended. Then in 2003, James moved again to modify his sentence. The trial court denied this motion. On October 29, 2003, the trial court found that James had served the executed portion of his sentences under DF-613, CF-404, and CF-477, but not under CF-661. Sometime thereafter, James was released to probation. Over a three-month period, James violated his probation by testing positive for marijuana four times, going to unapproved locations, and falsifying his employment four times. For his violations, the trial court placed James in custody until community corrections was prepared to release him to its work release programs. Five months later, James violated his probation by resisting law enforcement. The trial court ordered James to serve sixteen years of his suspended sentences under CF-404, CF-661, and DF-613 less credit time under CF-404, and, ordered him to \$500.00 restitution under CF-477. Thereafter, the trial court granted James's Belated Notice of Appeal pursuant to Indiana Post-Conviction Rule 2.

Case Synopsis (*continued*)

Parties' Arguments

Indiana Appellate Rule 7(B) Review

James contends that based on his character and the nature of the offenses his sentence is inappropriate. James highlights several factors pertaining to his character and his offenses, specifically: 1) he is sixteen years old; 2) none of his offenses were violent; 3) his crimes were borne out of drugs, alcohol, youth, and stupidity; 3) his immaturity will lessen with time; 4) he took responsibility by pleading guilty; 5) he suffers from mental illness and substance abuse; 6) both of his parents suffer from alcoholism; and 7) his criminal history consists of six non-violent juvenile adjudications. These facts, James argues, do not warrant the trial court's order of consecutive maximum sentences.

The State contends James's sentence is appropriate based on the nature of the offenses and his character, specifically: 1) James destroyed property of a business while committing burglary, stole a purse from a car, solicited his sister as an accomplice to fraud, committed various acts of theft, and escaped; and 2) James had already been adjudicated a delinquent for theft, truancy, runaway, burglary, theft, glue sniffing, battery, theft, forgery, escape, and possession of marijuana. The State argues that James's

character is among the worst of the worst juvenile offenders. This plus the nature of the offenses justifies his sentence.

Mitigators, Aggravators, and Blakely

James claims the trial court failed to consider substantial mitigators and considered improper aggravators when it imposed maximum consecutive sentences on all counts. He asserts that the trial court did not properly recognize his plea of guilty, remorse, or mental illness in imposing his first adult sentence. Further, he contends that the trial court improperly relied on aggravators not found by a jury in violation of his Sixth Amendment right, namely: 1) the imposition of a reduced sentence depreciates the seriousness of the crimes; 2) James was in need of correctional treatment in a penal facility; and 3) a portion of his past that is not specifically a part of his criminal history, including a statement that James lacks a moral conscience.

The State argues that the trial court properly imposed James's sentences. Specifically, the State claims that the trial court was within its discretion to find his acceptance of responsi-

Opinion in this case expected: By summer 2007

Mr. Young will be informed when the Court has issued an opinion in this case. Check the Court's website to read the opinion.

For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>

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Case Synopsis

bility and his mental illness were not significant mitigating factors and that the trial court properly considered the aggravators that a reduced sentence would depreciate the seriousness of the offense and that James needed penal rehabilitation. Further, the State asserts that the trial court could not have violated Blakely because James himself admitted to the burglaries and that at one time he lacked a conscience.

An Episode of Criminal Conduct

James argues that his theft and two fraud convictions are all based on the theft of a credit card, constituting the same episode of criminal conduct. He claims his sentences related to these offenses cannot statutorily exceed the presumptive sentence for a Class C felony – four years, instead of the nine years

he received.

The State asserts that the crimes relating to the theft and fraud convictions did not arise from the same episode of criminal conduct because the crimes occurred at significantly different times, and both crimes may be charged without any relation to the other.

GLOSSARY OF TERMS

Indiana Appellate Rule 7(B) –

An appellate court may revise a sentence it finds inappropriate based on the nature of the offense and the character of the offender.

Blakely – The United States Supreme Court required, pursuant to the Sixth Amendment of the United States Constitution, that any fact used to enhance a defendant's sentence must be presented to a jury and proven beyond a reasonable doubt.

An Episode of Criminal Conduct –

Offenses or a connected series of offenses that are closely related in time, place, and circumstance. IC 35-50-1-2.

TODAY'S PANEL OF JUDGES

Hon. Patrick D. Sullivan (Marion County), Presiding

- Judge of the Court of Appeals since January 1, 1969

Patrick D. Sullivan was elected to the Indiana Court of Appeals in 1968 and retained on the Court by election in 1972, 1982, 1992 and 2002. He is the only current member of the Court of Appeals to be popularly elected to the Court prior to the advent of the retention selection system.

Judge Sullivan was born in Huntington, Indiana and served for two years in the U.S. Navy during the Korean War. He received a BA in history from Washington & Lee University in Lexington, Virginia in 1956 and his law degree, *cum laude*, from Washington & Lee's law school in 1958.

Following law school, Judge Sullivan returned to Indiana and served as a Deputy Attorney General from 1958 to 1961. From 1961 to 1965, he engaged in the private practice of law with Minton, Mosiman, Sullivan & Johnson in Indianapolis. He was a Senior Commissioner with the Marion County Probate Court from 1963 to 1964 and a judge on the Marion County Civil Trial Court from 1965 to 1969.

During his tenure on the Court of Appeals, Judge Sullivan has served on the Supreme Court Advisory Committee on Rules of Practice & Procedure (1975-1980), as an Adjunct Professor at the Indiana University School of Law at Indianapolis, as a Lecturer on law and social policy at Indiana University Purdue University at Indianapolis, and on American diplomatic history at Indiana University. He was a faculty member at many appellate judges seminars and lectured on "Law and the Layman" for adult education courses for the Indianapolis Public School System.

Judge Sullivan is a member of the Indiana Judges Association, the Appellate Judges Conference of the American Bar Association, the Indianapolis Lawyers Commission, the U.S. Government Evaluation Project on Juvenile Law Centers, the Indianapolis Bar Association, the Indiana State Bar Association (where he served on the Board of Governors and, in 1996, as Counsel to the President), and the American Bar Association.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

Today's oral argument is the 184th case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. James S. Kirsch (Marion County)

- **Judge of the Court of Appeals since March 1994**

James S. Kirsch was appointed to the Court of Appeals in March 1994 and served as Chief Judge from March 1, 2004 to February 28, 2007. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J.D., cum laude, 1974) and Butler University (B.A. with honors, 1968).

Judge Kirsch served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm. Since 1990, he has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University.

Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and is a former member of the Board of Visitors of the Indiana University School of Law-Indianapolis. He is a past-president of the United Way/Community Service Council Board of Directors and a current or

former member of the Board of Directors of the United Way of Central Indiana, the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association. He is a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation.

Judge Kirsch is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors.

Judge Kirsch and his wife have two children. He was retained on the Court in 1996 and 2006.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.

TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998

Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court, Judge Robb was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis

Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges. Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, is married to a professor at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the U.S. Navy.

ATTORNEYS FOR THE PARTIES

For Appellant, Justin James:

Stacy Uliana
Uliana Law Group
Indianapolis

Stacy Uliana was born and raised in Brownsburg, Indiana. She earned her bachelor's degree in Chemistry from Indiana University in Bloomington in 1994. She attended Indiana University School of Law-Indianapolis where she wrote for the Indiana Law Review and graduated Summa Cum Laude in 1997. During law school, Ms. Uliana interned for Federal District Court Judge John D. Tinder and clerked for the Federal Community Defenders who represent individuals charged with federal crimes.

After law school, Ms. Uliana took a job with the Indiana Public Defender Council, providing research assistance and training for public defenders and defense attorneys throughout Indiana. During this time, she authored and co-authored manuals on Indiana sentencing law, search and seizure

law and confessions law.

In 2001, Ms. Uliana joined Liell & McNeil, a small Bloomington firm. Half of her practice was dedicated to representing criminal defendants at the trial, appellate and post-conviction stages, while the other half was dedicated to drafting patents, primarily for Caterpillar, Inc.

In 2006, Ms. Uliana returned to the Indiana Public Defender Council, while also maintaining a small criminal defense appellate practice. During her free time, she enjoys spending time with her three-year-old son, running and attending the Indy 500.

For Appellee, State of Indiana:

Matt Fisher
Deputy Attorney General
Indianapolis

Matthew Fisher grew up in Indianapolis and graduated from Lawrence Central High School. He received a degree in Chemistry from Purdue University and worked for several years as a research chemist at Roche Diagnostics. He then realized that his true calling lay in the Law and attended Indiana University School of

Law at Indianapolis, from which he graduated with honors in 2001.

Following graduation from law school, Mr. Fisher clerked for two years for the Honorable Sanford Brook, former Chief Judge of the Court of Appeals of Indiana. He joined the Attorney General's office in 2003.